

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte FRANCOIS DE KEYSER

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Appeal No. 96-3991  
Application No. 08/311,242<sup>1</sup>

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ON BRIEF

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Before KIMLIN, JOHN D. SMITH and SPIEGEL, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-6, 8 and 12-14, all the claims remaining in the present application. Claim 1 is illustrative:

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<sup>1</sup> Application for patent filed September 23, 1994. According to appellant, this application is a continuation of Application No. 07/835,151, filed February 13, 1992, now U.S. Patent No. 5,413,828, issued May 9, 1995.

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1. A flame retardant plastic article consisting essentially of a core of plastic polymeric material having coated thereon a protective, flame retardant layer, the protective flame retardant layer consisting essentially of (i) a thermoplastic polymeric material selected from the group consisting of a polyolefin and blends of polyolefins and (ii) a flame retardant, char-forming, intumescent system containing a flame retardant, char-forming, intumescent additive and a catalyst selected from the group consisting of a phosphoric acid precursor, a polyphosphoric acid precursor, and combinations of the phosphoric acid precursor and the polyphosphoric acid precursor.

The examiner relies upon the following references as evidence of obviousness:

Fulmer	4,254,177	Mar. 3, 1981
Scarso	4,997,876	Mar. 5, 1991
Staendeke et al. (Staendeke)	5,312,853	May 17, 1994
		(filed Sep. 23, 1993)

Appellant's claimed invention is directed to a flame retardant plastic article consisting essentially of a core of plastic polymeric material having a protective, flame retardant layer coated thereon. The protective flame retardant layer consists essentially of a thermoplastic polymeric material, such as a polyolefin, and a flame retardant, char-forming, intumescent (FRI) system. According to appellant, FRI systems have been known in the art for incorporation into plastic materials and for coating plastic materials. However, we are told that FRI systems have not

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been used in combination with polyolefins as a coating for plastic polymeric materials. The present specification, at page 4, discloses the disadvantages of the prior art methods of incorporating FRI systems into plastic materials and coating plastic materials with FRI systems. For instance, incorporation of a FRI system into a plastic material was known to adversely affect the mechanical properties of the plastic material. Also, coating plastic materials with FRI systems was known to result in unsatisfactory adhesion. According to appellant, the claimed "plastic article is flame resistant and does not suffer the problems associated with the prior art discussed below, such as when FRI materials are mixed with the core plastic matrix or when FRI materials are used as a coating alone" (page 5 of principal brief).

Appealed claims 1-6, 8 and 12-14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Fulmer in view of either Scarso or Staendeke.

Upon careful consideration of the opposing arguments presented on appeal, we agree with appellant that the applied prior art fails to establish a prima facie case of obviousness

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for the claimed subject matter. Accordingly, we will not sustain the examiner's rejection.

Fulmer, as urged by appellant and appreciated by the examiner, discloses a flame retardant plastic article that is coated with a hydrophilic polyurethane foam having large amounts of fire-retardant fillers therein (see Abstract). The coating of Fulmer does not comprise the presently claimed thermoplastic polymeric material in composition with an FRI system. Scarso and Staendeke, on the other hand, disclose what appellant's specification acknowledges to be within the prior art, i.e., a composition comprising a thermoplastic polymeric material and an FRI system. However, neither Scarso nor Staendeke teaches or suggests utilizing the flame retardant composition as a coating for any material, let alone the presently claimed polymeric material. Accordingly, we concur with appellant that Scarso and Staendeke provide no teaching or suggestion of employing the disclosed flame retardant compositions as a coating for the article of Fulmer. In our view, the only motivation for coating the Fulmer article with the composition of the secondary references results from the use of impermissible hindsight.

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In conclusion, based on the foregoing, the examiner's  
decision rejecting the appealed claims is reversed.

REVERSED

EDWARD C. KIMLIN	)	
Administrative Patent Judge	)	
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	)	
	)	
JOHN D. SMITH	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
CAROL A. SPIEGEL	)	
Administrative Patent Judge	)	

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